

REMARKS

Claim Rejections - 35 USC §112

In Amendment D filed August 14, 2007, claim 40 was amended to include the following language:

"wherein said first and second power assist devices are mounted such that they do not extend into said recess as the breath guard is moved between said raised and lowered positions."

The examiner contends that "nowhere in the specification or the disclosure is there any mention" of the above-quoted language and, on this basis, rejected claims 40-51 as failing to comply with the written description requirement of 35 USC §112. Applicant respectfully disagrees.

The test for determining if the written description requirement has been met is whether "An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, ***figures***, diagrams, and formulas that fully set forth the claimed invention." (MPEP, Section 2163, page 2100-173; emphasis supplied.) Further, the MPEP makes it clear that there is no *in haec verba* requirement; only that the added claim limitations be supported in the specification through express, implicit or inherent disclosure. (MPEP, Section 2163, page 2100-175.) Applicant's above-reference wording added to claim 40 in the previous amendment clearly passes this test.

It will be observed in this regard that Figs. 1, 2 and 3A-3C show the claimed first and second power assist devices (indicated in the Figs. at 95 and 97) in their various stages of operation. Specifically, Figs. 1 and 3A

show the assist devices when the cover/breath guard is in its fully closed position; Fig. 3B shows the assist devices when the cover/breath guard in its partially open position; and Figs. 2 and 3C show the assist devices when the cover/breath guard in its fully open position. It is crystal clear from these Figures that the power assist devices remain above the countertop surface (31) and completely out of the recess (23) of the cabinet at all times. The disclosure is unambiguous.

Accordingly, applicant respectfully submits that the above-referenced wording added to claim 40 in the previous amendment is fully supported by the original specification of this application, including Figs. 1, 2 and 3A-3c, and that the written description requirement of 35 USC §112 is thus fully satisfied.

Claim Rejections - 35 USC §103

Claim 40 in its current form is also submitted as defining subject matter patentable over the prior art, including Perzon and Fukushima et al.

In particular, claim 40 states that applicant's food product server includes a cabinet (e.g., 5 in Figs. 1 and 2) having a recess (e.g., 23 in Fig. 2) for supporting one or more food serving pans (e.g., 27) for holding food products, and further that the first and second power assist devices (e.g., 95, 97) are mounted such that they do not extend into the recess as the breath guard is moved between its raised and lowered positions, as is evident from Figs. 1, 2, and 3A-3C. There are several advantages to this arrangement. First, food from the pans cannot spill down onto the power assist devices. Also, clear and unobstructed access to the walls of recess is provided,

making them easy to clean. This is important in a food service environment where sanitary conditions are required. Further, the length of the recess (and thus the overall length of the cabinet) is reduced, since there is no need to provide extra room in the recess for the power assist devices.

In sharp contrast, the power assist devices in Fukushima extend down into the recess of the cabinet. This prior art arrangement is not desirable in a food service system, since the devices collect debris and make cleaning of the recess walls more difficult. Also, since food pans come in standard dimensions, extra room must be added to the length of the recess to accommodate the power assist devices, thus increasing the overall length of the cabinet. It is apparent, therefore, that applicant's claimed design represents a substantial and non-obvious improvement over Fukushima.

The other prior art of record similarly fails to teach applicant's invention as defined by claim 40, which is submitted to be allowable.

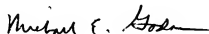
Claims 41-51 depend, either directly or indirectly, from claim 40 and are submitted to be allowable for at least the same reasons as claim 40. Further, the dependent claims cite additional features not shown or suggested by the prior art. By way of example but not limitation, claim 42 is directed to a specific arrangement for mounting the power assist devices so that they do not extend into the recess, noting particularly the first power assist device has connections with the cabinet and the breath guard and the second power assist device has connections with the breath guard and one of the upright side frame members of a frame mounted on the cabinet. This arrangement is

illustrated in Figs. 3A-3C and further distinguishes over the Fukushima reference, the abstract and drawings of which disclose no frame mounted on the cabinet. Claim 43 is even more specific as to the structure of the power assist devices and how they are connected to the system.

CONCLUSION

In view of the foregoing, favorable consideration and allowance of this application is requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael E. Godar".

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